

ORDINANCE NO. 07- 313

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF LOS ALTOS

ADDING A NEW CHAPTER 4.44 OF TITLE 4 OF THE LOS ALTOS MUNICIPAL
CODE ADOPTING LOCAL REGULATIONS APPLICABLE TO HOLDERS OF STATE
VIDEO FRANCHISES ISSUED BY THE CALIFORNIA PUBLIC UTILITIES
COMMISSION PURSUANT TO THE DIGITAL INFRASTRUCTURE AND VIDEO
COMPETITION ACT OF 2006, CODIFIED IN CALIFORNIA PUBLIC UTILITIES
CODE SECTION 5800 *ET SEQ.*

This ordinance adds a new Chapter 4.44 to Title 4 of the Los Altos Code to implement the provisions of the Digital Infrastructure and Video Competition Act of 2006, codified in California Public Utilities Code section 5800 *et seq.*, which the City is required to administer and enforce. THE COUNCIL OF THE CITY OF LOS ALTOS ORDAINS AS FOLLOWS:

Chapter 4.44
STATE VIDEO SERVICE FRANCHISES

4.44.010 Purpose.

This Chapter is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under the California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006), to provide video services in any portion of the City.

4.44.020 Rights Reserved.

The rights reserved to the City under this Chapter 4.44 are in addition to all other rights of the City whether reserved by this Chapter 4.44 or authorized by other applicable law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

4.44.030 Compliance with Chapter 4.44

Nothing contained in this Chapter 4.44 exempts a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or California Public Utilities Code section 5800 *et seq.*, or obligations under any franchise previously issued by the City, insofar as those may be enforced under California Public Utilities Code section 5800.

4.44.040 Definitions

For purposes of this Chapter 4.44, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this Chapter 4.44 shall be given the meaning set forth in the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, section 5800 *et seq.* ("DIVCA"). When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number

include the plural number, and "including" and "include" are not limiting. The word "shall" is always mandatory.

- A. "Access channel" means any channel on a network set aside by a state franchise holder for public, educational, or governmental use.
- B. "Applicant" means any person submitting any application required under Division 2.5 of the California Public Utilities Code.
- C. "Applicable law" means all lawfully enacted and applicable Federal, State, and City laws, ordinances, codes, rules, regulations and orders as the same may be amended or adopted from time to time.
- D. "Cable service" means (i) the one-way transmission to subscribers of video programming or other programming services; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "City" means the City of Los Altos, California. Any act that may be taken by the City may be taken by the City Council or any agency, department, agent or other entity now or hereafter authorized to act on the City's behalf.
- F. "City Council" means the governing body of the City of Los Altos, California.
- G. "Construction," "operation," or "repair" and similar formulations of those terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming. The term "operation" does not encompass or regulate the provision of services, but refers to activities affecting rights-of-way and other property subject to the jurisdiction of the City.
- H. "City Engineer" means the City Engineer of the City or the City Engineer's designee.
- I. "City Manager" means the City Manager of the City. Any act that may be taken by the City Manager may be taken by any agency, department, agent or other entity now or hereafter authorized to act on behalf of the City Manager.
- K. "DIVCA" means the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, section 5800 et seq., as may be amended from time to time.
- L. "Gross revenues" means all revenues (whether in the form of cash or other consideration) of a state franchise holder or its affiliates any way derived from its operations within the City
- M. "Incumbent cable operator" shall have the same meaning as in DIVCA.
- N. "Network" shall have the same meaning as in DIVCA.
- O. "Person" means an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the City.
- P. "Public rights-of-way" shall have the same meaning as in DIVCA.
- Q. "State franchise" means a franchise issued by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in DIVCA, within any portion of the City.
- R. "State franchise holder" means a person who holds a state franchise.
- S. "Subscriber" means the City or any person who legally receives any cable service video service from a state franchise holder operator delivered over that state franchise holder's network.

T. "User" means a person or the City utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

U. "Video Service" shall have the same meaning as in DIVCA.

4.44.050 State franchise fees.

a. Any state franchise holder operating within the City shall pay to the City a state franchise fee equal to five percent (5%) of the Gross Revenues of it or any affiliate that are subject to a franchise fee under California Public Utilities Code Section 5860.

4.44.060 PEG fees.

Any state franchise holder operating within the City shall pay to the City a PEG fee equal to two percent (2%) of the state franchise holder's gross revenues.

4.44.070 Payment of fees.

The state franchise fee required pursuant to Section 44.050, and the PEG fee required pursuant to Section 44.060, shall each be paid to the City quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or other means specified by the City, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, containing such information as the City Manager may require consistent with DIVCA. Unless the City Manager provides otherwise, the summary statement shall identify:

- (i) revenues received from subscribers, by category, with service revenues broken out by service levels;
- (ii) any charges to subscribers for which revenues were received, but on which a franchise fee was not paid;
- (iii) where the fee is paid on an allocated portion of revenues received, the total revenues received; the allocation factor; and how the allocation factor was calculated.

4.44.080 Audits.

The City may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

4.44.090 Late payments.

In the event a state franchise holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall, to the extent consistent with DIVCA, impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

4.44.100 Lease of City-owned network.

In the event a state franchise holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to 4.44.110, which fee shall otherwise be payable in accordance with the procedures established by this Chapter.

4.44.110 Customer service and consumer protection.

Each state franchise holder shall comply with all applicable customer service and consumer protection standards, including, to the extent consistent with California Public Utilities Code section 5900, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation.

4.44.120 Penalties for violations of standards.

- a. The City shall enforce the provisions of section 4.44.110.
- b. For material breaches, as defined in California Public Utilities Code section 5900, by a state franchise holder of applicable customer service and consumer protection standards, the City may impose the following penalties:
 1. For the first occurrence of a material breach, a fine of \$500.00 may be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.
 2. For a second material breach of the same nature within 12 months, a fine of \$1,000.00 may be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
 3. For a third material breach of the same nature within 12 months, a fine of \$2,500.00 may be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- c. Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code section 5900.
- d. The City Manager is authorized to provide any notices required un California Public Utilities Code section 5900. The City Manager shall coordinate with the Division of Ratepayer Advocate to protect consumers in the City.

4.44.130 Construction in the Public rights-of-way.

Except as expressly provided in this Chapter 4.44, the provisions of Chapter 9.04 of this Code, and all City administrative rules and regulations developed pursuant to Chapter 9.04, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder in any public rights-of-way.

4.44.140 Permits.

- a. Prior to commencing any work for which a permit is required by Chapter 9.04 of this Code, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Chapter 9.04. A permit application is complete when the state franchise holder has complied with all applicable laws and regulations, including but not limited to all City administrative rules and regulations, and all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).
- b. The City Engineer shall either approve or deny a state franchise holder's application for any permit required under Chapter 9.04 of this Code within sixty (60) days of receiving a complete permit application from the state franchise holder.
- c. If the City Engineer denies a state franchise holder's application for a permit, the City Engineer shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

d. A state franchise holder that has been denied a permit by final decision of the City Engineer may appeal the denial to the city council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

1. Affirm the action of the City Engineer without any further hearing; or
2. Refer the matter back to the City Engineer for further review with or without instructions; or
3. Set the matter for a public hearing before the City Council.

e. In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the City Engineer unless the City Council is itself conducting a public hearing on the matter.

f. The issuance of a permit is not a franchise, and does not grant any vested rights in any location in the Public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee.

4.44.150 Construction standards.

a. The construction, operation, or repair and maintenance of a state franchise holder's network shall be in accordance with all applicable Federal, State and local laws, including without limitation, zoning laws, construction codes, and the City's standard provisions and details. In addition, the construction, operation and maintenance shall be performed in a manner consistent with high industry standards, which obligation shall, without limitation, require a state franchise holder to comply with the latest edition of all applicable Federal, State and local laws, including without limitation, zoning laws, construction codes, electrical codes, and occupational safety and health acts. A state franchise holder shall at all times employ reasonable care, within the meaning of applicable law, and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

b. Without limiting the foregoing, all of a state franchise holder's network shall be constructed, operated and maintained in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel.

c. Except in underground utility service areas, a state franchise holder's network may be constructed overhead where poles now exist and either electric and telephone lines are now overhead, but where either electric or telephone lines are underground, or are being initially placed underground, the network shall be constructed underground in accordance with existing City practices at the time the network is constructed subject to any waivers that may be granted. Whenever and wherever the owner of the poles moves its plant from overhead to underground placement in an area, all network facilities and plant in that area shall be similarly moved underground by the state franchise holder as directed by the City Engineer in accordance with then-existing City practices, subject to any waivers that may be granted. The City will cooperate in good faith with a state franchise holder in any waiver process. Other facilities installed in the rights-of-way will be placed aboveground or underground in accordance with the City's practices, as amended from time to time.

d. A state franchise holder shall construct, operate and maintain its network so as not to endanger or interfere with improvements the City shall deem appropriate to make or to interfere in any manner with the public rights-of-way or legal rights of any property owner or to unnecessarily

hinder or obstruct pedestrian or vehicular traffic. A state franchise holder shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, telecommunications, water, sewer, or other utility facilities, or obstruct or hinder in any manner such entities' use of any public rights-of-way. Any and all public rights-of-way, public property, or private property that is disturbed or damaged by a state franchise holder during the construction, repair, replacement, relocation, operation, maintenance, or construction of a network shall be promptly repaired by the state franchise holder.

e. A state franchise holder shall by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City or any other governmental entity by reason of traffic conditions; public safety; public rights-of-way construction; public rights-of-way maintenance or repair (including resurfacing or widening); change of public rights-of-way grade; construction, installation or, repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public rights-of-way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the network, provided, however:

1. Except in the case of emergencies, the City shall provide written notice describing where the work is to be performed at least one week prior to the deadline for performing the work; a state franchise holder may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension shall not be unreasonably refused;

2. That the state franchise holder may abandon any property in place upon notice to the City, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the City receives notice, that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected thereby; and

3. If a State or local statute requires the City to compensate users of the right-of-way (including state franchise holders) for the cost of relocation or removal, nothing in this chapter shall be read to abrogate any right a state franchise holder may have to obtain an appropriate share of funds available for relocation or removal.

f. Within thirty (30) days after its receipt of a written request from the City, a state franchise holder shall expose its subsurface network facilities by potholing (digging a test hole) to a depth of one foot below the bottom of such facilities.

g. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the public rights-of-way, a state franchise holder shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Unless the matter is governed by a valid contract or a State or Federal law or regulation, the reasonable cost of removal, relaying or relocation shall be borne by the party requesting the removal, relaying or relocation. The City may direct a state franchise holder to remove, relay or relocate its facilities pending resolution of a dispute as to responsibility for costs, if the person requesting removal, relaying or relocation posts a satisfactory bond or provides other adequate security.

h. In the event of an emergency, or where a network creates or is contributing to an imminent danger to health, safety, or property, the City may remove, relay, or relocate any or all

parts of that network without prior notice; however, the City shall make reasonable efforts to provide prior notice.

i. A state franchise holder shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the state franchise holder shall have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. The state franchise holder shall be given not less than seven days advance notice to arrange for such temporary wire changes.

j. A state franchise holder shall have the authority to trim trees that overhang public rights-of-way of the City so as to prevent the branches of such trees from coming in contact with the state franchise holder's network. Notwithstanding that grant of authority, if the state franchise holder performs the work, it shall be fully liable for any damages caused thereby, and shall be responsible for replacing damaged trees and shrubs. A state franchise holder shall be responsible for notifying affected property owners prior to trimming trees. At the option of the City, such trimming may be done by it.

k. The state franchise holder shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by the City, except those installed or erected upon public utility facilities now existing without obtaining the prior written approval of the City Manager.

l. Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of network equipment must be properly licensed under laws of the State and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as the state franchise holder would have under this chapter and applicable law if the work were performed by state franchise holder. The state franchise holder shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this chapter and other applicable law, shall be responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed. This section is not meant to alter tort liability of a state franchise holder to third parties.

4.44.160 Publicizing proposed construction work.

a. A state franchise holder shall publicize the initial build or any substantial rebuild or upgrade of its network in each affected neighborhood at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to the City and by notifying those Persons whose property is within three hundred (300) feet of the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. Apart from any initial build or substantial rebuild or upgrade, any underground construction will be publicized in accordance with applicable notice requirements. In addition, before entering onto any Person's property, a state franchise holder shall contact the property owner or (in the case of residential property) the resident at least one (1) day in advance. If

a state franchise holder must enter a residence or building, it must schedule an appointment at the convenience of the owner or resident.

b. During the period of any network initial build or rebuild, a state franchise holder shall maintain a file open to public inspection showing its timetable for construction of the network by area of the City.

4.44.170 Participation with other utilities.

Each state franchise holder shall cooperate in the planning, locating and construction of its network in utility joint trenches or common duct banks with other telecommunications providers. The City will provide advance notice to any state franchise holder when it plans to open a trench and each state franchise holder shall provide notice to the City when it plans to open a trench. A state franchise holder and the City will offer to make space available to the other, and to other persons who participate in joint trenching, on reasonable terms.

4.44.180 Underground Services Alert.

Each state franchise holder shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground network facilities upon notification in accordance with the requirements of Section 4216 of the Government Code, and any other applicable law.

4.44.190 Emergency Alert Systems

a. Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

b. To the extent consistent with Public Utilities Code Section 5880, each state franchise holder provide an emergency alert override capability to permit the City in times of emergency to interrupt and cablecast an audio message on all channels simultaneously, as such capability was required under local cable franchise.

4.44.200 Interconnection for PEG Programming

Each state franchise holder, and each incumbent cable operator operating under a City franchise issued pursuant to Division 6 of this title, shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code Section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point for interconnection is available, each state franchise holder will make an interconnection available to each channel originator providing PEG programming to an incumbent cable operator, and will provide the facilities necessary for the interconnection. The cost of any interconnection will be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the state franchise holder and the incumbent cable operator.

4.44.210 Notices.

a. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant is required to file with the Public Utilities Commission.

b. Unless otherwise specified in this chapter, all notices or other documentation that a state franchise holder is required to provide to the City under this Division 6 or the California Public Utilities Code shall be provided to the City Manager.

PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

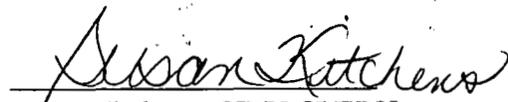
The foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the City of Los Altos on July 10, 2007 and was thereafter, at a regular meeting held on July 24, 2007 passed and adopted by the following vote:

Ayes: PACKARD, CARPENTER, CASAS, BECKER, COLE
Noes:
Absent:



Robert C. Cole, MAYOR

Attest:



Susan Kitchens, CITY CLERK